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DISTRICT III

February 24, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2025AP1757 Barron County Department of Health & Human Services v. H.K.R. (L. C. No. 2024TP9)

Before Gill, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Heather[2] appeals from orders terminating her parental rights to her son, Ira, and denying her postdisposition motion. Heather argues that her trial counsel provided constitutionally

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Cases appealed under WIS. STAT. RULE 809.107 are "given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply." RULE 809.107(6)(e). Conflicts in this court's calendar have resulted in a delay. It is therefore necessary for this court to sua sponte extend the deadline for a decision in this case. *See* WIS. STAT. RULE 809.82(2)(a); ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). Accordingly, we extend our deadline to the date this decision is issued.

ineffective assistance by failing to discuss with her whether she should opt for a jury trial or a bench trial prior to her being asked by the circuit court, at the plea hearing, what type of trial she desired. Heather also argues that the circuit court erred by denying her postdisposition motion for a new trial because the court did not conduct an adequate colloquy regarding her decision to decline to invoke her right to a jury trial and instead have a bench trial. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. For the reasons that follow, we summarily affirm.

In October 2024, the Barron County Department of Health & Human Services filed a petition to terminate Heather's parental rights (TPR) to Ira, alleging that grounds for the TPR existed under WIS. STAT. § 48.415(2)(a) and (6), continuing need of protection or services and failure to assume parental responsibility.

At a plea hearing, Heather, through her counsel, stated that she was contesting the petition. The circuit court then asked, "Does [Heather] wish a court trial or a jury trial?" Heather's counsel responded, "One moment, Judge. Judge, I think [Heather] would like just a court trial." The court accepted Heather's decision without a further colloquy.

At a factfinding hearing, the circuit court found that grounds existed to terminate Heather's parental rights. At the subsequent dispositional hearing, the court considered all of the statutory factors for determining Ira's best interests and found that it was in Ira's best interests that Heather's parental rights be terminated. *See* WIS. STAT. § 48.426(3).

[2] For ease of reading, we refer to the appellant in this confidential matter using a pseudonym, rather than her initials. We do the same for the child.

Heather filed a postdisposition motion, arguing that the circuit court should be required to conduct a "personal colloquy with a parent on the assertion of the right [to] demand a jury trial," akin to the waiver colloquy that is required in criminal matters pursuant to ***State v. Pinno***, 2014 WI 74, 356 Wis. 2d 106, 850 N.W.2d 207. Heather further argued that she was deprived of her right to the effective assistance of counsel due to her trial counsel's failure to sufficiently explain to Heather her right to a jury trial and counsel's failure to request more time for Heather to decide whether she should request a jury trial. Heather requested that the court vacate its TPR order and grant a new trial.

After an evidentiary hearing, the circuit court denied Heather's motion. The court concluded that it was not required to conduct a colloquy regarding Heather's decision to have a bench trial because the case is a civil matter, and therefore Heather was not required to affirmatively waive her right to a jury trial but rather she declined to invoke that right. Further, the court noted that the right to a jury trial for a TPR is statutory, not constitutional. The court also found, based on testimony from the evidentiary hearing, that Heather's trial counsel did not perform deficiently by failing to prepare her for her decision as to the type of trial because counsel testified that he twice discussed with Heather her right to request a jury trial prior to Heather being questioned by the court. Moreover, the court stated that Heather failed to prove that she was prejudiced by her trial counsel's performance because there was no reasonable probability that the jury would have reached a different conclusion than the court.

Heather now appeals. She argues that the circuit court erred by denying her postdisposition motion. She asserts that (1) the court failed to conduct a colloquy with her regarding her right to a jury trial, and that (2) she was denied the effective assistance of counsel due to trial counsel's failure to sufficiently explain her right to a jury trial. Specifically, Heather

argues that WIS. STAT. § 48.422(4) requires the court and trial counsel to inform a party in a TPR action of his or her rights, including the right to a jury trial, and that both the court and Heather's trial counsel failed to have a "meaningful discussion" with her "about the advantages, disadvantages and characteristics" of a bench trial and a jury trial.

The resolution of Heather's appeal requires us to interpret statutes, which presents a question of law that we review de novo. *See* ***State v. Stewart***, 2018 WI App 41, ¶18, 383 Wis. 2d 546, 916 N.W.2d 188. "[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.' Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted).

> Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.

Id., ¶46. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." ***Id.*** (citation omitted).

WISCONSIN STAT. § 48.422 provides that, at a contested TPR hearing, the circuit court must inform "[a]ny party who is necessary to the proceeding or whose rights may be affected by an order terminating parental rights" of his or her right to a jury trial "upon request if the request is made before the end of the initial hearing on the petition." Sec. 48.422(1), (4). Nothing in

§ 48.422(4) required a circuit court to conduct a colloquy with a party whose rights may be affected by a TPR order if he or she does not request a jury trial prior to the conclusion of the initial hearing on the petition. Heather does not contend that she requested a jury trial prior to the end of the initial hearing, nor does she claim that the court failed to inform her of this right. In fact, the court specifically inquired of Heather's counsel whether Heather elected to try the TPR matter to a jury or the bench.[3]

Heather also cites ***Racine County Department of Human Services v. Latanya D.K.***, 2013 WI App 28, ¶12, 346 Wis. 2d 75, 828 N.W.2d 251, in which this court stated that "the right to a jury trial in TPR proceedings is of great importance." Heather's argument is unpersuasive. As Heather herself notes, in that case, we expressly declined to impose an obligation for the circuit court to conduct a colloquy when a parent does not elect to request a jury trial. *See* ***id.***, ¶21. Heather provides no authority stating that a court is required to conduct a colloquy when a parent elects to have a bench trial at a TPR plea hearing. Accordingly, the circuit court here did not err by not conducting a colloquy after receiving Heather's decision to have a bench trial.

Turning to Heather's ineffective assistance of counsel claim, a parent in a TPR action has the right to be represented by effective counsel. *See* ***A.S. v. State***, 168 Wis. 2d 995, 1003-05,

[3] Heather also appears to argue that WIS. STAT. § 48.30(2) imposes a duty on the circuit court to inform a parent of his or her right to be granted a continuance of the plea hearing if he or she wishes to consult with an attorney regarding the decisions over whether to have a jury trial or to substitute a judge. We are unpersuaded by this argument, as § 48.30 states that it applies to the plea hearing "to contest an allegation that the child or unborn child is in need of protection or services," *see* § 48.30(1), rather than the plea hearing for a TPR. Because WIS. STAT. § 48.422 expressly applies to TPR hearings, *see* § 48.422(1) (discussing parties' rights before "the hearing on the petition to terminate parental rights"), we reject Heather's claim that § 48.30(2) is controlling. *See* ***Stone v. WEC***, 2025 WI App 68, ¶27, 418 Wis. 2d 611, 28 N.W.3d 211 ("[W]here a general statute and a specific statute apply to the same subject, the specific statute controls.").

485 N.W.2d 52 (1992). "A claim of ineffective assistance of counsel presents a mixed question of law and fact." ***State v. Thiel***, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. We will uphold the circuit court's findings of fact unless they are clearly erroneous. ***Id.*** However, "[w]hether counsel's performance satisfies the constitutional standard for ineffective assistance of counsel is a question of law, which we review de novo." ***Id.***

To demonstrate that counsel was ineffective, a party must prove both that counsel's performance was deficient and that the deficient performance was prejudicial. ***A.S.***, 168 Wis. 2d at 1005; ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove deficient performance, a party "must show specific acts or omissions of counsel that are 'outside the wide range of professionally competent assistance.'" ***State v. Arredondo***, 2004 WI App 7, ¶24, 269 Wis. 2d 369, 674 N.W.2d 647 (2003) (citation omitted). To prove prejudice, a party "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Strickland***, 466 U.S. at 694. However, a party "need not prove the outcome would 'more likely than not' be different in order to establish prejudice in ineffective assistance cases." ***State v. Sholar***, 2018 WI 53, ¶44, 381 Wis. 2d 560, 912 N.W.2d 89. If the parent "fails to satisfy either prong, we need not consider the other." ***State v. Breitzman***, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93.

Heather asserts that her trial counsel "merely mention[ed] the right to a jury trial … shortly before and during" the plea hearing and that this "hurried" explanation constituted deficient performance. However, this argument is contrary to the circuit court's findings, which are not clearly erroneous, that trial counsel discussed this issue with Heather before the hearing and then "had another discussion with her" during the hearing. To the extent

that Heather is arguing that her trial counsel was incredible in this regard, we note that the court clearly found Heather's trial counsel more credible than her. We defer to the court's finding on the credibility of a witness, as it had "the opportunity to observe the witness' demeanor and gauge the testimony's persuasiveness." ***Jacobson v. American Tool Cos., Inc.***, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998). Further, Heather's argument is undeveloped as she does not specify what information her trial counsel should have given her to assist her in choosing between a trial to the bench or a jury, but failed to. Accordingly, we conclude that Heather's trial counsel did not perform deficiently.

Moreover, we conclude that Heather has failed to prove that she was prejudiced by her counsel's performance. As the circuit court noted, the County called 13 witnesses, who collectively discussed both Heather's failure to engage with various social workers regarding her child and her failures to assume parental responsibility for her child. The court further found that Heather's own testimony supported the TPR grounds alleged by the County, as she admitted that she was "never sober" during the pertinent time period and that she would not change her behaviors in accordance to her social workers' requests. Heather does not point to anything in the record to undermine our confidence in the outcome of the TPR proceedings.[4]

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

[4] Without citation to case law, Heather contends that because her argued error is structural, she need not show that she was prejudiced by her trial counsel's performance. Because we conclude that there was no error, structural or otherwise, we reject this argument.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals